

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

TIMOTHY PEOPLES, JR., H-63933, )  
Plaintiff(s), ) No. C 12-2163 CRB (PR)  
v. ) ORDER GRANTING MOTION  
E. MATA, et al., ) TO VACATE DISMISSAL AND  
Defendant(s). ) REOPENING CASE  
(Dkt. #105)

Per order filed on February 2, 2015, the court granted defendants' motion for summary judgment and dismissal with partial leave to amend. The court specified that plaintiff could amend to allege retaliation claims against defendants Crabtree and Lopez (as well as unserved defendants Mata, Asuncion and Devillar), and against defendant Miller, "within 28 days of this order." Feb. 2, 2015 (dkt. #102) at 12. Plaintiff also could amend to allege a separate claim of use of excessive force against Crabtree, Lopez, Mata, Asuncion and Devillar, and a separate claim of denial of medical care against Miller. The court warned plaintiff that "[f]ailure to file a proper amended complaint within the designated time will result in the dismissal of this action." Id.

Per order filed on March 26, 2015, the court dismissed the action because “[m]ore than 50 days have passed and plaintiff has not filed an amended complaint or sought an extension of time to do so,” and instructed the clerk to enter judgment and close the file. Mar. 26, 2015 Order (dkt. #103) at 1.

1 Plaintiff promptly moved to vacate the dismissal based on his claim that  
2 he did not receive the February 2, 2015 order granting defendants' motion for  
3 summary judgment and dismissal with partial leave to amend. At the court's  
4 request, defendants filed a response noting that they do not oppose plaintiff's  
5 motion because a review of plaintiff's incoming mail log indicates that he did not  
6 receive any mail from the court during the month of February 2015.

7 Good cause appearing therefor, plaintiff's motion (dkt. #105) to vacate the  
8 dismissal is GRANTED. The clerk shall vacate the March 26, 2015 order of  
9 dismissal and corresponding judgment, and reopen this case. The clerk also shall  
10 serve plaintiff with a copy of the February 2, 2015 order and of this order.

11 By no later than July 10, 2015, plaintiff may amend to allege retaliation  
12 claims against defendants Crabtree and Lopez (as well as unserved defendants  
13 Mata, Asuncion and Devillar), and against defendant Miller; a separate claim of  
14 use of excessive force against Crabtree, Lopez, Mata, Asuncion and Devillar; and  
15 a separate claim of denial of medical care against Miller, as set forth in detail in the  
16 February 2, 2015 order. The pleading must be simple and concise and must  
17 include the caption and civil case number used in this order and the words FIRST  
18 AMENDED COMPLAINT on the first page. Failure to file a proper amended  
19 complaint within the designated time will result in the dismissal of this action.

20 Plaintiff's renewed request for appointment of counsel is denied for lack  
21 of exceptional circumstances. See Franklin v. Murphy, 745 F.2d 1221, 1236 (9th  
22 Cir. 1984) (decision to request counsel to represent an indigent litigant under  
23 U.S.C. § 1915 is within "the sound discretion of the trial court and is granted only  
24 in exceptional circumstances"). The court will consider appointment of counsel  
25 on its own motion, and seek volunteer counsel to agree to represent plaintiff pro  
26 bono, if it determines at a later time in the proceedings that appointment of  
27

1 counsel is warranted.

2 SO ORDERED.

3 DATED: June 1, 2015

  
CHARLES R. BREYER  
United States District Judge